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DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[38-AAA-1, Supplement No. 1]

INSTRUCTIONS FOR HOLDING REFERENDUM ON COTTON MARKETING QUOTAS ON THE 1938 CROP

SUPPLEMENT NO. 1

The second paragraph of part D (Eligibility and General Provisions) of the "Instructions for Holding Referendum on Cotton Marketing Quotas on the 1938 Crop", 38-AAA-1,¹ issued February 18, 1938, pursuant to Section 347 of the Agricultural Adjustment Act of 1938, is hereby amended to read as follows:

Only farmers who were engaged in the production of cotton in 1937 are entitled to vote. Any person who shared in the proceeds of the 1937 cotton crop as landowner, operator, share tenant, or sharecropper, shall be considered as engaged in the production of cotton.

Done at Washington, D. C., this 2nd day of March, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 38-641; Filed, March 2, 1938; 12:09 p. m.]

[38-AAA-1-A, Supplement No. 1]

INSTRUCTIONS FOR HOLDING REFERENDA ON COTTON AND FLUE-CURED TOBACCO MARKETING QUOTAS OF THE 1938 CROP

SUPPLEMENT NO. 1

The second paragraph of part D (Eligibility and General Provisions) of the "Instructions for Holding Referenda on Cotton and Flue-Cured Tobacco Marketing Quotas on the 1938 Crop", 38-AAA-1-A,² issued February 18, 1938, pursuant to Sections 347 and 312 of the Agricultural Adjustment Act of 1938, is hereby amended to read as follows:

Only farmers who were engaged in the production of cotton in 1937 are eligible to vote in the cotton marketing quota referendum. Likewise, only farmers who were engaged in the production of flue-cured tobacco in 1937 are eligible to vote in the flue-cured tobacco marketing quota referendum. The fact that a farmer is eligible to vote in one referendum does not necessarily mean that he is eligible to vote in the other. Any person who shared in the proceeds of the 1937 cotton crop as landowner, operator, share tenant, or sharecropper shall be considered as engaged in the production of cotton. Likewise, any person who shared in the proceeds of the 1937 flue-cured tobacco crop as landowner,

operator, share tenant, or sharecropper shall be considered as engaged in the production of flue-cured tobacco.

Done at Washington, D. C., this 2nd day of March, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 38-640; Filed, March 2, 1938; 12:09 p. m.]

Bureau of Agricultural Economics.

REVISED RULES AND REGULATIONS OF SECRETARY OF AGRICULTURE FOR CARRYING OUT PROVISIONS OF PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930, AS AMENDED

By virtue of the authority vested in the Secretary of Agriculture by an "Act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce", approved June 10, 1930 (46 Stat. 531), as amended April 13, 1934 (48 Stat. 584), June 19, 1936 (49 Stat. 1533), and August 20, 1937 (50 Stat. 725), I, M. L. Wilson, Acting Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following rules and regulations to supersede all previous regulations¹ for like purposes and to be in force and effect until amended or superseded by rules and regulations hereafter made by the Secretary of Agriculture under said act.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 1st day of March.

[SEAL]

M. L. WILSON,
Acting Secretary of Agriculture.

RULES AND REGULATIONS

REGULATION 1.—DEFINITIONS

SECTION 1. Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

SEC. 2. The following definitions are included in the act and shall have the same meaning in these regulations.

PARAGRAPH 1. *Person*.—This term includes individuals, partnerships, corporations, and associations.

PAR. 2. *Secretary*.—This term means the Secretary of Agriculture of the United States.

PAR. 3. *In commerce*.—This term means interstate or foreign commerce as defined in section 1, paragraphs 3 and 8 of the act.

PAR. 4. *Perishable agricultural commodity*.—This term means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character.

¹ 1 F. R. 1583; 2 F. R. 865 (DI).

¹ 3 F. R. 493 (DI).

² 3 F. R. 495 (DI).



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PAR. 5. Commission merchant.—This term means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale on commission or for or on behalf of another.

PAR. 6. Dealer.—This term means any person engaged in the business of buying and/or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (a) no producer shall be required to obtain a license as a dealer if selling only commodities of his own raising, (b) no person buying in carloads solely for sale at retail shall be considered a dealer until his purchases of such produce in any 1 calendar year are in excess of 20 carloads, including wholesale or jobbing quantities as defined herein, and (c) no person buying such produce solely for canning and/or processing within the State where grown shall be considered a dealer, unless such produce, after purchase, is frozen or packed in ice. Any producer, retailer, or canner described in exceptions (a), (b), or (c) may elect to secure a license and in such case shall be considered a dealer.

PAR. 7. Broker.—This term means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, or both.

SEC. 3. The following additional definitions shall apply to terms used in these regulations.

PARAGRAPH 1. The Perishable Agricultural Commodities Act, 1930, or the act.—This term means an act of Congress entitled, "An act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce," approved June 10, 1930 (46 Stat. 531), as amended April 13, 1934 (48 Stat. 584), June 19, 1936 (49 Stat. 1533), and August 20, 1937 (50 Stat. 725).

PAR. 2. Chief of Bureau.—This term means the Chief or Acting Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

PAR. 3. Licensee.—This term means any person who holds an unrevoked and valid unsuspended license issued under the act.

PAR. 4. Branch.—This term means any subdivision, whether permanent or seasonal, owned and conducted in the name of a firm licensed under this act, whose manager or other person responsible for the conduct of the branch has discretionary authority in performing the usual functions of a commission merchant, dealer, or broker.

PAR. 5. Inspector.—This term shall be deemed to mean any person authorized or licensed by the Secretary to inspect any perishable agricultural commodity.

PAR. 6. Produce.—This term means any perishable agricultural commodity, as defined in section 2 of this regulation.

PAR. 7. Fresh fruits and fresh vegetables.—This term includes all products generally considered by the trade as perishable fruits and vegetables, whether or not frozen or packed in ice and whether or not held in common or cold storage, but does not include those which have been dried or manufactured into articles of food of a different character.

PAR. 8. Wholesale or jobbing quantities.—This term as used in section 1, paragraph 6, of the act means quantities of produce of not less than 1 ton in weight shipped or received by rail, truck, boat, or any other means of transportation.

PAR. 9. Truly and correctly to account.—This term shall be deemed to include (a) the prompt rendering of a true and correct itemized statement of the sale or other disposition of any consignment of perishable agricultural commodities in commerce with full payment of the gross amount for which such produce is sold, less the proper, usual, or agreed selling charges and all other expenses necessarily and actually incurred or agreed to in the handling thereof; (b) the prompt payment of deficits or other adjustments resulting from the handling of produce on consignment or for or on behalf of another in commerce; (c) the prompt payment of brokerage duly earned in connection with produce in commerce; and (d) the prompt payment of the purchase price or other amount due either the seller or the buyer in accordance with

the terms of the agreement between the parties concerned in settlement for produce purchased or sold in commerce.

PAR. 10. Account promptly.—This term means that full accounting and payment of the net proceeds in cash or its equivalent shall be effected within 10 days after the day on which the final sale shall have been made of any lot of produce sold on commission or otherwise for or on behalf of another, unless otherwise provided by agreement between the parties: Provided, That in the case of a sale on commission at shipping point or of a shipment diverted while in transit or diverted from one terminal market to another, the 10-day period shall be computed from the time of arrival of the shipment at destination. This term also means that the payment of the purchase price or other amount due either the seller or the buyer of produce shall be made in accordance with the terms of the contract of purchase and sale, or, if time of payment is not specified, shall be made within a reasonable time after delivery and acceptance of the produce purchased and sold, and that brokerage charges shall be paid within a reasonable time after having been earned.

PAR. 11. Reject.—This term shall be deemed to mean the act of any person who has purchased or offered to handle on consignment or otherwise, for or on behalf of another, produce in commerce (1) of refusing or failing to accept such produce within a reasonable time, or (2) of advising the seller or shipper or his agent that he will not receive such produce in accordance with his contract or offer, or (3) of indicating an intention not to accept such produce through an act or failure to act either of which is inconsistent with the contract.

PAR. 12. Reasonable time.—This term as used in paragraph 11 above shall be deemed to mean with respect to rail shipments not to exceed 24 hours after receipt of notice of arrival of the produce, and with respect to boat shipments not to exceed 24 hours after the produce is unloaded and made accessible for inspection, unless the purchaser applies for Federal inspection of said produce within this period, or unless at the time of the receipt by the purchaser of notice of arrival of the produce the temperature is sufficiently below freezing to render a complete inspection of the produce dangerous thereto, commodity and existing weather considered. In case the temperature is dangerously below freezing at the time of arrival of the produce a preliminary inspection for the sole purpose of determining whether transit freezing injury is present in the load shall be made by the purchaser or caused to be made as soon as possible after the receipt of such notice of arrival, and the further inspection of the produce for the purpose of determining whether the produce meets the requirements of the contract of purchase and sale may be deferred until such time as the temperature and weather conditions will permit such inspection to be safely made, but reasonable time shall not extend beyond the time when such inspection can be safely made. The meaning of the terms "as soon as possible" and "safely made" shall be determined upon a consideration of all the facts and circumstances shown to exist in each case: *Provided*, That if the receiver has made arrangements to be notified of arrival on Sunday or a legal holiday and is so notified the 24-hour period shall run from 12:01 a. m. to 12 midnight on the next day.

PAR. 13. Acceptance.—This term shall be deemed to mean that unless the purchaser notifies the seller within a reasonable time as defined in paragraph 12 above that he rejects the produce, or unless the purchaser applies for Federal inspection of said produce within a reasonable time (24 hours) and takes action to notify the seller of his rejection of said produce within an hour after he has received either a verbal or a written report of the result of such inspection, or unless, in the case of dangerous freezing temperature as provided in paragraph 12, he shall have notified the seller, within 24 hours after receipt of notice of arrival of the produce, as to the weather conditions which prevent thorough inspection and notified the seller of his rejection immediately after inspection can be safely made following temperature danger-

ously below freezing, he will be deemed to have accepted the produce, subject to his right to claim damages in case such produce failed to meet the terms of the contract.

REGULATION 2.—ADMINISTRATION

SECTION 1. The Chief or Acting Chief of Bureau shall perform for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of the act and of these regulations.

REGULATION 3.—LICENSES

SECTION 1. PARAGRAPH 1. No person shall at any time carry on the business of a commission merchant, dealer, or broker without a license issued by the Secretary and countersigned by the Chief of Bureau which is valid and effective at such time.

PAR. 2. Any person who maintains one or more branches, as defined in regulation 1, has the option of operating all branches under the license of the parent organization or of taking out a separate license for each branch.

SEC. 2. Any person who desires to secure a license to carry on such business shall make application therefor on a form to be obtained from the Chief of Bureau or his representatives. Applications must be signed by the owner, partner, or, in the case of a corporation, an official duly authorized to do so.

SEC. 3. Each application shall be accompanied by the license fee of ten dollars (\$10) in the form of a money order, bank draft, cashier's check, or certified check, made payable to the U. S. Department of Agriculture, and the application and fee shall be forwarded to the Chief of Bureau of Agricultural Economics, U. S. Department of Agriculture, Washington, D. C. Thereafter the annual fee of ten dollars (\$10) required by the act shall be remitted in the same manner.

SEC. 4. Copies of licenses may be issued on request upon the payment of a fee of \$1 for each copy. Each copy shall contain the word "COPY" in conspicuous letters on its face and be certified by the Chief of Bureau as a true copy of the original.

SEC. 5. Thirty days or more prior to the anniversary date of a license, the Chief of Bureau shall mail a notice to the licensee at the latest address known to the Chief of Bureau, advising that the license will automatically terminate on its anniversary date unless the annual fee of \$10 is paid on or before said date. A license which has automatically terminated because of failure of the licensee to pay the annual fee may be reinstated within thirty days after its automatic termination upon payment of a fee of \$15.

SEC. 6. Upon receipt of an application accompanied by the proper fee for a license, the Secretary will, if the applicant is found to be eligible, issue a license certifying that the licensee is authorized to engage in the business of a commission merchant and/or dealer and/or broker. The fee so tendered, together with any arrearage fees and/or penalty shall be deposited as soon as practicable in a special deposit account, until the license is issued or denied or until the check or other form of remittance is determined to be valid. If the license is denied, the fee shall be returned or refunded, but, if issued, the fee and any arrearages and penalty shall, as soon as practicable, be deposited in or transferred to miscellaneous receipts and will not thereafter be subject to refund. Fees received for renewal and/or reinstatement of license shall be handled in the same manner as other fees mentioned herein.

SEC. 7. Any commission merchant, dealer, or broker engaged in business subject to the act, without a valid and effective license, will be permitted to settle his liability, if such violation is found not to have been willful, by paying the amount of fees accrued from the date the violation started to the date when application for license and fee is submitted, and a penalty not in excess of \$25 as may be determined by the Chief of Bureau.

SEC. 8. Each license shall bear a serial number, the signature of the Secretary, the seal of the United States Department of Agriculture, and be countersigned by the Chief of Bureau. The licensee may place upon his stationery, trucks

or business sign, an inscription that he is licensed under the act, but such inscription must not be of such form or arrangement as to be deceptive or misleading to the public, nor shall any such inscription be shown unless the person using the same has a license valid at the time.

SEC. 9. The licensee shall advise promptly the Chief of Bureau of any change of address and/or any change in the officers, partners, or ownership, or in the name in which the business is conducted. In case of a change in the ownership of a business, or in the name of a corporation, or in a partnership, such as the death, withdrawal or addition of a partner or partners, or the conduct of a business in a name different from that shown on the license, a new license is required.

SEC. 10. Arrearage fees to be paid by an applicant shall be computed on a basis of 1/12th of the annual fee of \$10, or eighty-three and one-third cents (83 1/3¢), per month or fraction thereof from the time the applicant should have been licensed to the date application and valid fee were submitted for a license.

REGULATION 4.—ACCOUNTS AND RECORDS

SECTION 1. Every commission merchant, dealer, and broker shall preserve for a period of 2 years the accounts, records, and memoranda required by the act fully and correctly disclosing all transactions involved in his business, including the true ownership of such business by stockholding or otherwise.

SEC. 2. Each licensee shall during ordinary business hours permit any duly authorized representative of the United States Department of Agriculture to enter his place of business and inspect any and all such records pertaining to such business as may be necessary to ascertain the facts material to the investigation of any complaint under the act. Any necessary facilities for such inspection shall be extended to such representative by the licensee, his agents, and employees.

SEC. 3. No representative of the United States Department of Agriculture shall, without the consent of the licensee, divulge or make known in any manner, except to other representatives of the United States Department of Agriculture who may be required to have such knowledge in the regular course of their official duties, or except insofar as he may be directed by the Secretary, the Chief of Bureau, or by a court of competent jurisdiction, any facts or information regarding the business of such licensee which may come to the knowledge of such representative through an examination or inspection of the business or accounts of the licensee, or unless the same is relevant and material to the issue in any hearing authorized by the act.

REGULATION 5.—PROCEDURE AS TO COMPLAINTS, HEARINGS, AND ORDERS—COMPLAINTS, INVESTIGATIONS, AND ANSWERS

SECTION 1. PARAGRAPH 1. Complaint charging violation of any provision of section 2 or section 9 of the act may be filed with the Chief of Bureau by any interested person, including any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture. If such complaint is to be made the basis of a claim for damages, the complaint must be filed within 9 months after the cause of action accrues. The same facts may also be made the basis of a disciplinary complaint against a licensee complained of at any time within 2 years after the violation of the law occurred: Provided, however, That the 2-year limitation herein prescribed shall not apply to flagrant or repeated violations of the act.

PAR. 2. Complaints under the act may be filed informally by telegraph, by letter, or by a preliminary statement of facts setting forth the essential details of the transaction complained of. So far as practicable every such complaint should state:

- (a) The name and address of each party and of his agent, if any, representing him in the transaction involved;
- (b) Kind of produce shipped;

- (c) Date of shipment;
- (d) Car initial and number, if car lot;
- (e) Shipping and destination points;
- (f) Quantity shipped;
- (g) Quality or grade of each kind of produce;
- (h) If a sale, state: Sale price; amount actually received;
- (i) If a consignment, state: Reported proceeds; gross; net; date;
- (j) Amount of damages claimed;
- (k) Statement of material facts, including terms of contract.

PAR. 3. The complaint must be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts sales, and any special contracts or agreements.

PAR. 4. In complaints involving damages in connection with the sale or purchase of produce, the complainant will be required to furnish information tending to show the existence of a contract.

PAR. 5. Upon receipt of all of the information and supporting evidence submitted by the complainant, the Chief of Bureau shall make such investigation as in his opinion is justified by the facts. If such investigation discloses that no violation of the act has occurred, the matter will be dropped and the complainant so advised.

PAR. 6. If the statements in the informal complaint seem to warrant such action, the Chief of Bureau shall call upon the party complained against to state his side of the controversy in an effort to effect an amicable adjustment of the claim. Should such adjustment not be made and the information secured by correspondence or investigation indicate the probability of a violation of the act, further proceedings will be based upon formal complaint, either for damages filed by the aggrieved party or for disciplinary action filed by any person authorized in section 6 (b) of the act. In the latter case, the Chief of Bureau may proceed with the handling of the complaint without further action by the person originally filing the complaint, except as he may be subpoenaed as a witness in the case of his deposition taken without expense to him.

PAR. 7. Formal disciplinary complaints, that is, complaints which do not involve claims for damages, shall be filed in such form as may be prescribed by the Chief of Bureau and shall set forth the grounds for alleging a violation of the act.

PAR. 8. If the procedure provided in paragraph 6 of this section fails to effect an amicable adjustment and indicates the probability of a violation of the act, the complainant shall be required to submit a formal complaint to the Chief of Bureau setting forth the information and accompanied by the papers indicated in paragraphs 2 and 3 of this section, and stating the amount of damages claimed, with the basis therefor and the method of determination. Three additional copies shall be furnished for filing and service on the respondent. If there is more than one respondent, a further copy shall be furnished for each of the additional respondents.

PAR. 9. If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or in double the amount of the claim with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary against the complainant or any counterclaim by respondent, provided, that the furnishing of a bond shall be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

PAR. 10. If the formal complaint, either disciplinary or involving claim for damages, appears to be in proper form, it shall be transmitted by the Chief of Bureau, together with the Bureau's entire file relating to the case, to the Solicitor of the Department, who, if he determines that the complaint is in proper form, shall serve a copy thereof upon the party complained against, who shall be referred to as the respondent.

PAR. 11. In making service of the complaint, respondent will be called upon to file an answer thereto, in triplicate, within 10 days from date of such service.

Hearings

SEC. 2. PARAGRAPH 1. Upon failure or refusal of the respondent to explain satisfactorily in writing or to make such reparation as is satisfactory to the complainant, the Solicitor of the Department may order a public hearing upon the matter before an examiner for the Department, and due notice of such public hearing shall be given by the Solicitor to the person concerned, which hearing shall be held in any place in which the party complained of is in business.

PAR. 2. In such a public hearing, the complainant and the respondent may appear personally or by counsel. In such proceedings, the burden of proof is upon the complainant. Representatives of the Department who may have knowledge of any fact in the case, and any other persons having information, accounts, records, or memoranda relating to the subject of the complaint, may be subpoenaed to testify or furnish evidence at such hearing by deposition.

PAR. 3. In a hearing on any complaint, the Secretary or any officer or employee designated by him may sign and issue subpoenas, administer oaths, examine witnesses, take depositions, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under the act.

PAR. 4. Amendment of any pleading will be allowed by the Solicitor of the Department prior to the hearing or by the examiner at the hearing if such amendment is not prejudicial to the other party and is deemed proper by the Solicitor or such examiner; otherwise it will be refused.

PAR. 5. Where the amount of damages claimed does not exceed \$500, a hearing need not be held unless deemed necessary or desirable by the Chief of Bureau or the Solicitor, or granted upon application of complainant or respondent setting forth the peculiar circumstances making such hearing necessary for a proper presentation of the case. Proof in support of the complaint and the answer may be supplied in the form of depositions or verified statements of fact. Complainant's opening statement of facts should be mailed to the Solicitor within fifteen days following receipt of the Solicitor's notice that the case is to be submitted without a formal hearing. Respondent will have fifteen days from receipt of complainant's opening statement in which to mail an answering statement of facts, and complainant will then have five days from receipt of respondent's answering statement in which to mail a reply thereto. All such statements must be furnished in triplicate. Application for the furnishing of proof in deposition form must be promptly made and the information furnished as required by regulation 5, section 3. Either party failing to furnish proof in the manner and within the time above specified, unless such time has been extended, will be deemed to have waived the furnishing thereof, and the disputed issues of fact and law may, subject to paragraph 8 of this section, be considered and decided upon the pleadings and attached exhibits, together with such proof as the opposing party may furnish.

PAR. 6. Where the amount of damages claimed in a complaint is greater than \$500 but does not exceed the sum of \$2,000, both parties may, by the filing of a waiver of hearing, consent to the submission of the case to the Secretary upon sworn statements of facts, depositions, supporting exhibits, and other records comprising the file in the case made

by the Bureau in connection with its preliminary investigation of the complaint, in lieu of a record made at a public hearing provided for in the preceding paragraphs 1 to 3, inclusive. If the respondent, after notice of his right to apply for or waive a formal hearing, fails to indicate within the time provided therefor in such notice whether he desires to apply for or to waive such hearing, the case may proceed as though he had filed a waiver. Where such waiver is filed, complainant may, within 15 days after receipt of notice that both parties have waived hearing, file with the Department an original and two copies of its verified statement of facts in support of the allegations of the complaint, and an additional copy for each respondent in excess of one. The Department will make service thereof upon respondent, who will then have 15 days within which to file, in like manner, an original and two copies of its answering statement of facts. Complainant will then have 5 days within which to file a reply to respondent's answering statement. If either party feels that his explanation already made is sufficient and desires to waive the making of a further statement, he shall promptly so advise the Department. Upon full submission of the case, as herein provided, the Secretary will then consider such records and enter findings of facts and make an appropriate order in the same manner and which shall have the same force and effect as if entered upon a record made at a public hearing.

PAR. 7. When a complaint has been regularly served upon the respondent therein named and such respondent thereafter fails or refuses to file an answer thereto within the allotted time, the verified complaint and attached exhibits, if any, may, subject to paragraph 8 of this section, be accepted both as a pleading and as proof.

PAR. 8. In any case, the Chief of Bureau or the Solicitor may call for the submission of additional evidence or further investigation of the facts at any time prior to decision by the Secretary if such additional information is deemed necessary to a fair determination of the matter.

PAR. 9. Any fact developed as a result of an investigation, either in person or by correspondence, under the authority of the Chief of Bureau shall be considered by the Secretary as part of the evidence: Provided, That a copy of the investigator's report and of all evidence secured by correspondence shall have been submitted to both parties. Any rebuttal evidence submitted by either party shall be (1) by verified statement of facts, if within the knowledge of the party to the proceeding who submits the statement, or (2) by deposition, if within the knowledge of some one else, all of which shall also be considered by the Secretary.

Depositions

SEC. 3. PARAGRAPH 1. The testimony of any witness who is or will be unable to appear in person at a hearing may be taken in deposition form. Either party, complainant or respondent, may apply to the Department in writing for an appropriate order, in which application the case should be identified by the names of the parties and docket number and give:

- (1) The name of each witness whose deposition is to be taken;
- (2) The name and address of a notary public or other person who is authorized to administer oaths before whom such witness or witnesses may testify;
- (3) An accurate description of the place where such deposition or depositions will be taken, such as street, office building, and room therein.

PAR. 2. Such witness or witnesses and the notary public or other person designated to take a deposition, unless he be an employee of the Department, shall severally be entitled to the fees authorized by section 13 (e) of the act, which fees shall be paid by the party at whose instance the deposition was taken.

Final Order

SEC. 4. PARAGRAPH 1. If, after hearing has been held or waived in complaints where the damages claimed exceed

\$500 and on complaints where damages do not exceed \$500 not requiring hearings as provided by section 6 (c) of the act, the Secretary determines that the respondent has violated any provisions of section 2 of the act he will, unless reparation has already been made to complainant, determine the amount of damage, if any, to which the complainant is entitled as the result of such violation and will make an order directing respondent to pay to complainant such amount on or before the date fixed in the order. He will also issue such disciplinary order as the facts warrant.

PAR. 2. Any order of the Secretary other than for the payment of money shall be effective not less than 10 days from and after the date the order is signed.

PAR. 3. Any order for reparation shall state the period which shall be allowed for the payment of such reparation.

PAR. 4. If either party appeals from a reparation order entered by the Secretary without formal hearing as provided in section 6 (d) of the act, the suit shall be filed in the District Court of the United States for the district in which the respondent is located.

Petitions for Rehearing

SEC. 5. PARAGRAPH 1. Application for further hearing in a proceeding before final submission must be by petition within 30 days from the date of hearing or for reopening a proceeding after final submission must be by petition within 30 days from the date of such final submission. Such petition shall state specifically the grounds relied upon and the petitioner must show that service of a copy thereof has been made upon the adverse party. Such adverse party may have 20 days in which to file objections with the Chief of Bureau and to serve a copy thereof on the petitioner.

PAR. 2. If the application be for further hearing before final submission or for reopening a proceeding to take further evidence, the nature and purpose of the evidence to be adduced must be briefly stated and it must appear not to be merely cumulative.

PAR. 3. After an order has been issued the Secretary will consider an application for the reconsideration of such order when a written petition for such proceeding is filed with the Chief of Bureau within 15 days after such order has been served upon petitioner, provided such petition sets forth, (1) some fact or facts which disclose that the damages awarded are excessive or inadequate, or (2) the discovery of material evidence, together with a statement thereof, which was not available to petitioner prior to the hearing, or (3) the statement of some fact or facts which prima facie show that the proceedings did not conform to the requirements of the law.

REGULATION 6.—SUSPENSION AND REVOCATION

SECTION 1. Whenever the Secretary determines, as provided in section 6 of the act, (a) that any commission merchant, dealer, or broker has violated any of the provisions of section 2, or (b) that any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14 (b) of this act, the Secretary may publish the facts and circumstances of such violation and/or suspend the license of such offender for a period not to exceed 90 days, except that, if the violation is a flagrant or repeated violation of such provisions, or if it be found that the licensee has committed one of the offenses set forth in section 8 (b) or (c) of the act, the Secretary may revoke the license of the offender.

SEC. 2. Whenever the Secretary determines that a licensee has failed or refused to keep such records as are prescribed in section 9 of the act, the facts and circumstances may be published and the license of the offender suspended for a period not to exceed 90 days by order of the Secretary.

SEC. 3. Upon the failure or refusal of any licensee to permit the inspection of accounts, records, and memoranda material to a complaint, the facts and circumstances incident thereto may be published and the license of the offender suspended until such permission is given.

SEC. 4. Upon failure of a licensee against whom a reparation order has been issued to show to the satisfaction of the Chief of Bureau within 5 days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as authorized by section 7 (c) of the act or has made payment in full or has filed a petition for rehearing or reargument as provided in section 5 of regulation 5, the Chief of Bureau shall notify the licensee that his license is suspended automatically at the end of the 5-day period until such time as he has shown to the satisfaction of the Chief of Bureau that he has paid the amount specified with interest.

SEC. 5. Immediately upon the issuance of an order of suspension or revocation the Chief of Bureau will cause general publicity to be given to the action in order that those doing business with the person whose license shall have been suspended or revoked may take due notice thereof.

SEC. 6. PARAGRAPH 1. Whenever the Secretary shall order the suspension or revocation of a license, the person against whom such order is directed shall be served by the Chief of Bureau with a copy of the order and be notified of the effective date thereof.

PAR. 2. Except in the case of any license automatically suspended by the act, a reasonable time, not less than 10 days between the date of issuance and the date upon which the order of suspension or revocation becomes effective, shall be stated in the order within which the licensee may make all necessary arrangements with some other person, whose license shall not have been either suspended or revoked, to safeguard the interests of consignors or other innocent parties whose property or business may be affected by such suspension or revocation and to terminate the affairs and business of such licensee relating to the handling of perishable agricultural commodities in commerce.

PAR. 3. After the revocation of his license or during the effective period of any suspension thereof the licensee shall not either directly or indirectly through any agent, employee or otherwise, carry on the business of a commission merchant, broker, or dealer until his status as a licensee has been restored.

PAR. 4. The suspension or revocation of a license shall not prevent the licensee from collecting amounts due on his contracts or in connection with transactions in which he acted as an agent and remitting the same promptly to his principals and obligees.

REGULATION 7.—SERVICE OF COMPLAINTS AND ORDERS

SECTION 1. Service of any complaint or order required by the act or prescribed by these regulations shall be deemed sufficient if made by registered mail or personally upon the licensee or upon his attorney. Service so made upon any member of a partnership or any officer of an association or corporation shall be sufficient. Personal service includes leaving notice at the last address furnished the Chief of Bureau in compliance with these regulations or at the last and usual place of abode of any member of a partnership or officer of an association or corporation.

REGULATION 8.—TRADE TERMS AND DEFINITIONS

SECTION 1. Unless otherwise defined, the following terms when included in a contract or communication involved in any investigation made or hearing held pursuant to this act shall be construed, respectively, to mean:

PARAGRAPH 1. The term "Today's shipment", or shipment on a specified date (such as shipment September 12), shall mean that the goods referred to shall be under billing by the transportation company the day the order is given or on the date specified in time to be picked up by a train scheduled to move that day's loadings from the shipping point provided that such train shall leave the first pick-up point on its schedule before midnight of the day the order is given.

PAR. 2. The term "Tomorrow's shipment" or "Immediate shipment" shall be deemed to mean that the shipment referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled

to leave not more than 24 hours later than allowed under "Today's shipment."

PAR. 3. The term "Quick shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 48 hours later than that allowed under "Today's shipment."

PAR. 4. The term "Prompt shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 72 hours later than allowed under "Today's shipment."

PAR. 5. The term "Shipment first part of week" or "Early part of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Monday or Tuesday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

PAR. 6. The term "Shipment middle of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Wednesday or Thursday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

PAR. 7. The term "Last of week" or "Latter part of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave on Friday or Saturday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

PAR. 8. The provisions "Shipment as soon as possible" or "As soon as cars can be secured" shall be deemed to mean that the shipper is uncertain as to when the shipment can be made but expects to make it within a reasonable time and will make it as soon as possible. But in any case where these words are so used the buyer shall, at any time after 12 days from the date the order is given, have the right to cancel the order or contract of sale provided notice of his decision so to cancel shall have been received by the shipper before shipment has been made.

PAR. 9. The term "f. o. b." (for example, "f. o. b. Laredo, Tex.", or even "f. o. b. California") shall be deemed to mean that the commodity quoted or sold is to be placed free on board the car or other agency of through land transportation at shipping point, in suitable shipping condition (see definitions of "suitable shipping condition", sec. 2, pars. 10 and 11 of this regulation) and that the buyer assumed all risks of damage and delay in transit not caused by the shipper, irrespective of how the shipment is billed. The buyer has the right of inspection at destination before the goods are paid for, but only for the purpose of determining that the produce shipped complied with the terms of the contract or order at time of shipment subject to the provision covering suitable shipping condition. This right of inspection does not convey or imply any right of rejection by the buyer because of any loss, damage, deterioration, or change which has occurred in transit.

PAR. 10. "Suitable shipping condition" in relation to direct shipments shall be deemed to mean that the commodity, at time of billing, shall be in a condition which, when shipment is handled under normal transportation service and conditions, will assure delivery without abnormal deterioration at the destination specified in contract of sale.

PAR. 11. "Suitable shipping condition" in connection with reconsigning or rolling cars shall be deemed to mean that the commodity, at time of sale, shall meet the requirements of the definition of this phrase provided for application to direct shipments in paragraph 10 of this regulation.

PAR. 12. The term "F. O. B. acceptance" shall be deemed to mean the same as f. o. b. except that the buyer assumes full responsibility for the goods at shipping point and has no right of rejection on arrival, nor has he any recourse against the shipper because of any change in condition of the goods in transit, unless the goods when shipped were not in suitable shipping condition. (See definitions, sec. 1, pars. 10 and 11 of this regulation.) The buyer's remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment.

PAR. 13. The term "F. O. B. Acceptance final" shall be deemed to mean that the buyer accepts the commodity f. o. b. cars at shipping point without recourse.

PAR. 14. The term "F. O. B. steamer" shall be deemed to mean that the commodity bought or sold is to be placed free on board the steamer at shipping point in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

PAR. 15. The term "F. A. S. steamer" shall be deemed to mean that the commodity bought or sold is to be delivered free alongside the steamer in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

PAR. 16. The term "Delivered" or "Delivered sale" shall be deemed to mean that the commodity quoted or sold is to be delivered by the seller on board car, or on dock if delivered by boat, at the market in which the buyer is located, or at such other market as agreed upon, free of any and all charges for transportation or protective service. The seller assumes all risks of loss and damage in transit not caused by the buyer. For example, a sale of "U. S. No. 1 potatoes delivered Chicago" means that the potatoes when tendered for delivery at Chicago shall meet all the requirements of the U. S. No. 1 grade as to quality and condition.

PAR. 17. The term "In transit", "Roller", or "Rolling car" shall be deemed to mean that the commodity referred to is in possession of the transportation company and under movement from shipping point when the quotation is made, and that the car is moving over a route in line of haul between the point of origin and the market in which delivery is to be made, and has been so moving since date of shipment without any delay attributable to the shipper or his agent. If a roller, or rolling car, or car in transit is sold f. o. b. shipping point, the buyer will be deemed to assume only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with car rental and refrigeration and heater charges, if any; provided that the kind and extent of the protective service required by the shipper's instructions to the carriers are specified in the contract. But the buyer shall not be deemed to have assumed any demurrage, storage, detention, icing, or heater charges, or diversion or reconsignment charges, that would not have accrued had the car been originally shipped direct to the destination named in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided.

PAR. 18. The term "Tramp car" or "Tramp car sale" shall mean that the commodity has left the shipping point under a bill of lading issued prior to the day on which the quotation is made and has moved or is moving over a route out of line of haul with the market in which it is to be delivered or in which it is being offered or quoted, or which has been moving over a route in line of haul between the point of origin and the market in which it is to be delivered or in which it is being offered or quoted, but has been delayed in transit by the shipper, or has been held by the transportation company at diversion or other points en route awaiting instructions from the shipper and by such holding or delay has missed scheduled movement between point of shipment and the market in which it is to be delivered as the result of the transaction in question. But if sold f. o. b. shipping

point, the buyer assumes only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with the car rental and refrigeration and heater charges, if any; provided, that the kind and extent of the protective service required by shipper's instructions to the carriers are specified in the contract. But the buyer shall not assume any demurrage, storage, detention, icing, or heater charges, or diversion or reconsignment charges, that would not have accrued had the car been originally shipped direct to the destination provided in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided.

PAR. 19. The term "Rolling acceptance" shall be deemed to mean that the buyer accepts at time of purchase a commodity which is in the possession of the transportation company and under movement from shipping point, under the terms and conditions described in paragraphs 17 and 18 of this regulation, except that the buyer assumes full responsibility for transportation of the goods from time of purchase, has no recourse against the seller because of any change in condition after time of purchase unless the goods when shipped were not in suitable shipping condition, and has no right of rejection on arrival. The buyer's remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment. By agreement between the parties, however, the purchase may be made subject to inspection at any specified point while the car is rolling or in transit and the point at which the buyer will assume transportation charges may be specified without affecting the time of acceptance of the commodity.

PAR. 20. The words or term "Track sale" or "Sale on track" shall be deemed to mean that when a commodity is sold on track after arrival at destination, the buyer shall be considered to have waived any right to reject the commodity so purchased upon receipt by him or his duly authorized representative, from the seller or his duly authorized representative, of the bill of lading, delivery order, or other document enabling him to obtain the goods from the carrier.

The foregoing shall not be construed as depriving the buyer of a right to reparation when the unloading of the car shall demonstrate that a part of the lading which was not accessible to inspection was of a quality or condition much inferior to that portion which was accessible to inspection; but notice of intention to file claim for reparation must be given seller within 24 hours after receipt by buyer of delivery order or bill of lading.

If the seller gives the date of arrival when quoting price, the buyer shall assume all charges that accrue on the shipment from the date of its arrival in the absence of any written memorandum of sale to the contrary. If the seller fails to furnish the date of arrival when quoting price, in the absence of any written memorandum of sale which includes the date of arrival or specific written statement as to who shall assume such charges as have accrued after arrival, the buyer may assume that the shipment arrived at point of sale on the day and date upon which the purchase was made, and shall be liable only for such charges as would properly attach to a shipment arriving on date it was purchased.

PAR. 21. The abbreviations "C. A. F.", "C. A. C.", and "C. I. F." shall be deemed to mean "cost and freight," "cost and charges," and "cost insurance and freight," respectively. When a sale is made c. a. f. it shall be deemed to mean the same as an f. o. b. sale except that the selling price includes the correct freight charges to destination. C. a. c. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes the correct freight and refrigeration or heater charges to destination. C. i. f. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes insurance and the correct freight, refrigeration, or heater charges to destination.

PAR. 22. A "carload" or "car lot" or "car" when referred to in offers, quotations, or sales in which the quantity is not more definitely specified, and in the absence of well-established trade custom or standard as to size of a "carload" of the commodity in question, shall be deemed to mean not less than the lowest minimum quantity required by the carrier's tariff applicable to the movement, and not more than 10 percent in excess of such lowest minimum tariff requirements, except that where carrier's tariffs provide alternative rates and minima, the buyer shall state which tariff minimum must be observed, and in event of failure so to do, the shipper may exercise his discretion, in no case, however, exceeding the higher tariff minimum quantity, except only such variations therefrom as are permitted in this paragraph.

PAR. 23. The term "Shipping-point inspection" shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the seller assumes the risk incident to incorrect certification.

PAR. 24. The term "Shipping-point inspection final" or the words "Inspection final" following the name of the State or point as "California inspection final", shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the buyer assumes the risk incident to incorrect certification and is without recourse as to quality and condition.

PAR. 25. The term "Subject approval wired government inspection" shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, and to correctly communicate, by wire or other agreed means, the statements on the certificate as to quality, condition and grade, and other essential information, whereupon the purchaser upon approval thereof will be deemed to have accepted the commodity without recourse as to quality and condition.

PAR. 26. The term "Guaranteed advance," as used in connection with an advance payment on consigned produce, shall be deemed to mean that the party making the advance guarantees that the net proceeds to the consignor shall at least equal the amount so advanced, and in any case where a guaranteed advance is made the consignor cannot be held liable for any deficit resulting from the sale of the produce, if such deficit is not occasioned by or contributed to by some act or acts of the consignor.

PAR. 27. The term "Accommodation advance," or "Regular advance," as used in connection with an advance of money or credit against anticipated net proceeds to be realized from the sale of consigned produce, shall be deemed to mean that the shipper has received an advance of money or credit and if the consigned produce does not sell for enough to cover the cost of transportation and handling, including customary or agreed commission and the advance made to him, the shipper must return to the one making the advance a sum equal to the deficit sustained.

PAR. 28. The term "Price arrival," in the absence of a contrary specific understanding, shall be deemed to mean that the produce is shipped either direct to the customer or to an agent of the shipper, for the benefit of the customer, the price to be subject to agreement between the customer and the shipper upon the arrival of the goods at the customer's destination and with sufficient time being permitted for inspection.

PAR. 29. The term "F. O. B. inspection and acceptance arrival" shall be deemed to mean that the commodity quoted or sold is to be placed by the seller free on board car or other agency of through transportation at shipping point, the cost of transportation to be borne by the buyer, but the seller to assume all risks of loss and damage in transit not

caused by the buyer who has the right to inspect the goods upon arrival and to reject them if upon such inspection they are found not to meet the specifications of the contract of sale at destination. The buyer may not reject without reasonable cause. Such a sale is f. o. b. only as to price and is on a delivered basis as to quality and condition.

PAR. 30. The term "F. O. B. sale at delivered price" shall be deemed to mean the same as f. o. b. except that transportation charges from shipping point to destination shall be borne by the seller, that is, the sale is f. o. b. as to quality and delivered as to price.

REGULATION 9.—SUNDAYS AND HOLIDAYS

SECTION 1. Sundays and legal holidays shall not be included in the computation of the 5-day period provided in section 7 (d) of the act, nor in connection with the periods defined in regulation 1, section 3, paragraphs 11, 12, and 13, except if the notice of arrival of the produce is received by the purchaser on Sunday or a legal holiday, the 24-hour period shall begin to run at 12:01 a. m. the succeeding day, and regulation 8, except section 1, paragraph 1, of said regulation 8.

Sec. 2. Sundays and legal holidays shall be included in the computation of time in all other periods mentioned in the act or in these regulations.

REGULATION 10.—INSPECTION SERVICE

SECTION 1. The rules and regulations of the Secretary governing the inspection and certification of fruits and vegetables as outlined in Service and Regulatory Announcements No. 93 (Agricultural Economics) and amendments thereto, and such additional amendments as may from time to time be promulgated, insofar as they apply to fresh fruits and fresh vegetables, shall govern the inspection of these products under this act and are hereby made a part of these regulations.

REGULATION 11.—COPIES OF RECORDS

SECTION 1. Copies of the application and other records pertaining to licensees under this act may be furnished under the conditions prescribed in the regulations of the Department of Agriculture, and, except where requested by Government officials, upon the payment of the following fees, which shall be deposited in the Treasury of the United States as miscellaneous receipts:

- (a) For each typewritten copy, 15 cents per page.
- (b) For each photographic or photostatic copy, 25 cents per page.
- (c) For each separate authentication, 25 cents.

[F. R. Doc. 38-635; Filed, March 1, 1938; 3:20 p. m.]

Bureau of Biological Survey.

ORDER PERMITTING TRAPPING ON THE UPPER MISSISSIPPI RIVER WILD LIFE AND FISH REFUGE

Pursuant to Section (a) of Regulation 1-A and to Regulation 2-A of the Regulations for the Administration of the Upper Mississippi River Wild Life and Fish Refuge, public trapping of muskrats, under permits of the Superintendent of said Refuge, in the State of Minnesota, in accordance with the laws of Minnesota and in accordance with the regulations governing the said Refuge, as well as with the restrictions and conditions hereinafter provided, is hereby permitted within said Refuge in Minnesota, except on the areas specifically scheduled below; between March 19 and April 7, 1938, both dates inclusive:

MINNESOTA

Houston County

Area Number 1.—All of the lands and waters lying in Township 104 N., Range 4 W., 5th P. M., described as follows: Those parts of the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14 lying southerly and westerly of Pine Creek; SE $\frac{1}{4}$ SW $\frac{1}{4}$.

No. 43—2

E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$. Lots 1, 2, 3 and 4 in Sec. 23; Lots 1, 2, 3, 4 and 5 in Sec. 24; Lots 1, 2, and 5 and NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 25; N $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 26, all of the lands and waters of Lot 1, Sec. 30, Township 104 N., Range 3 W., 5th P. M.; and all of the lands and waters enclosed by the meandered boundaries of what is known as Target Lake situated in parts of said Sections 23 and 24, and all of the lands and waters enclosed by the meandered boundaries of that portion of what is known as Broken Arrow Slough situated northerly of a straight line drawn between the points of intersection of said slough by the north lines of Lots 2 and 4 of Sec. 25, Township 104 N., Range 4 W., excepting from Lot 2, Sec. 24, Township 104 N., Range 4 W. a rectangular parcel of land surrounding the Edward Hoffman cottage, more particularly described by metes and bounds as follows: Beginning at Corner 1, a point on the shore of the Mississippi River 75 feet south of the northeast corner of said Lot 2; thence west 29 feet, smoke house falls 5 feet south 150 feet, Corner 2, a 1" x 24" galvanized iron pipe; thence south parallel with the shore line 514 feet, Corner 3; a 1" x 24" galvanized iron pipe; thence east 150 feet, Corner 4, on the shore of the Mississippi River; thence north with the shore line 514 feet to the place of Beginning.

Area Number 2.—All of the lands and waters lying in Township 103 N., Ranges 3 and 4 W., 5th P. M. described as follows: The NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and Lots 1 and 2 in Sec. 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, and Lots 2, 3, 4 and 5, that portion of Lot 6 east of the C. M. St. P. & P. R. R., and Lots 7 and 8, all in Sec. 12; Lots 1, 2, 3, 4, and 5, that portion of Lot 6 lying easterly of the easterly right of way line of the C. M. St. P. & P. R. R., NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ in Sec. 13; and all of the lands and waters enclosed by the meandered boundaries of what is known as Lawrence Lake situated in parts of said Sections 12 and 13, all in Township 103 N., Range 4 W., and Fractional Sec. 6, Township 103 N., Range 3 W.

Area number 3.—All of the lands and waters lying in Township 101 N., Ranges 3 and 4 W., 5th P. M., which are enclosed by the following definite boundaries: Starting at the northwest corner of Lot 7 of said Sec. 25, thence south Range 3 W., 5th P. M. intersects the westerly bank of the Mississippi River, thence West along the north line of said Sec. 30 to a meandered lake, thence around the northerly meandered boundary of said lake to the point of intersection of the northerly meander line of said lake with the east line of Sec. 25, Township 101 N., Range 4 W., thence North along the east line of said Sec. 25 to the northeast corner of said Sec. 25, thence West along the north line of said Sec. 25 to the northwest corner of Lot 7 of said Sec. 25, thence south along the west lines of said Lot 7, of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and of Lot 8, all in said Sec. 25, to the point where the west line of said Lot 8 intersects the northerly meandered boundary of a meandered lake, thence around the westerly meandered boundary of said lake to the point where said meandered boundary is intersected by the south line of said Sec. 25, thence along the south line of said Sec. 25 to the southeast corner of said Sec. 25, thence along the west line of Sec. 31, Township 101 N., Range 3 W., 5th P. M. to the point of intersection of said west line with Minnesota Slough, thence following said Minnesota Slough in southeasterly direction to the point of intersection with the Minnesota-Iowa State boundary line, thence east to the point where the Minnesota-Iowa State boundary line intersects the Mississippi River, thence northwesterly along the Mississippi River where it forms the easterly boundaries of fractional sections 32, 29, 30, to the place of Beginning, excepting therefrom Lot 3, Sec. 32.

PERMITS—RESTRICTIONS ON TRAPPING, ETC.

Permits for the public trapping of muskrats, herein authorized, may be issued without charge by the Superintendent of the Upper Mississippi River Wild Life and Fish Refuge to any qualified person. The issuance of such per-

mits and the privileges conferred thereby shall be further subject to the following restrictions:

1. In the issuance of permits hereunder, preference will be given to persons who have been bona fide residents for a period of six months last past within or near the Refuge.

2. Not more than one permit will be issued to the same individual.

3. Before any permit may be issued, the applicant shall exhibit to the said Superintendent or his representative a valid trapping license from the State in which such trapping is to be conducted, and the applicant shall, in his application for permit, make a sworn statement as to his period of residence in the civil township, village, or city in which he claims such residence.

4. Permits will be valid and authorize public trapping only on the dates specified in the permit.

5. Muskrats may be taken on the Refuge only with traps for capturing the animals alive, or with ordinary spring steel or other traps the use of which is approved by the Superintendent or his authorized representative. The possession or use within the boundaries of the Refuge of a muskrat spear, or of any similar device by means of which muskrats may be speared, or of any trap or device that does not comply with the requirements of these regulations is prohibited. Prohibited traps and devices found on the Refuge, if not removed therefrom by the owner thereof upon the direction of the Superintendent, will be seized by the Superintendent or his representative.

6. No person shall hunt muskrats with a gun or the aid of a dog, or disturb or molest any muskrat house or muskrat feeding house.

7. To run a trap line or to visit traps between sunset and one-half hour before sunrise is prohibited, but each permittee shall visit and inspect each of his traps within the Refuge at least once each day, and at the close of the trapping season each trap shall be taken up and removed from the Refuge.

8. Birds and mammals, other than muskrats, found alive in such traps shall be immediately liberated. Birds or mammals, other than muskrats, found dead or mortally injured, shall be immediately turned over to the Superintendent or his representative.

9. Trappers may not cut any growth on the Refuge except willows for use as trap stakes or drags.

10. Whenever it shall appear advisable for the proper administration of the Refuge, the Superintendent may, in his discretion, terminate trapping on the entire Refuge or any portion thereof, within three days after giving notice to that effect. Thereupon all outstanding permits for trapping muskrats on the area or areas affected shall become null and void.

11. Each permittee not later than April 30, 1938, shall submit to the Superintendent of the Upper Mississippi River Wild Life and Fish Refuge, Winona, Minnesota, a report correctly stating the total number of muskrats taken on the Refuge under the permit during the season, together with the name and address of each person or firm to whom such pelts thereof were disposed of and the number disposed of to each such person or firm.

Failure of a permittee to comply with any of the above provisions, or the violation by him of any of the regulations issued under authority of the Act of June 7, 1924 (43 Stat. 650), establishing said Refuge, or of any State laws or regulations applicable to trapping on said Refuge, shall not only render the offender subject to prosecution under said laws or regulations, but shall be sufficient ground for refusal of a permit to such offender during the Federal muskrat trapping season next following on said Refuge, or of any other use or privilege on the Refuge for which a permit may be required by regulations.

This Order shall become effective on March 2, 1938.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

Dated: March 2, 1938.

[F. R. Doc. 38-642; Filed, March 2, 1938; 12:09 p. m.]

Food and Drug Administration.

[Service and Regulatory Announcements—Tea No. 12]

STANDARDS UNDER THE TEA ACT

The following standards prepared and submitted by the Board of Tea Experts are hereby fixed and established as standards under the Tea Act for the year beginning May 1, 1938, and ending April 30, 1939:

- (1) Formosa Oolong.
- (2) Formosa Black.
- (3) Congou.
- (4) Java (to be used for all fully-fermented teas excepting China, Japan, Formosa).
- (5) Japan Black.
- (6) Japan Green.
- (7) Japan Dust.
- (8) Gunpowder (to be used for all China green teas).
- (9) Scented Canton (to be used for all scented teas).
- (10) Canton Oolong.

These standards apply to tea shipped from abroad on or after May 1, 1938. Tea shipped prior to May 1, 1938, will be governed by the standards which became effective May 1, 1937.¹

As standards are now set for the fully-fermented teas Formosa Black and Japan Black, regulation 20 under the Tea Act was modified in 1935 to omit the statement: "Should Japans be made as fermented teas, they are to be examined in comparison with the Congou standard." The Japan and Formosa fermented teas should be judged by their respective standards.

Regulation No. 26 under the Tea Act was amended in 1930 to include Formosa Oolong and as amended reads as follows:

"(26) In the case of Ceylon, India, Java, Sumatra, and Formosa Oolong teas the needle leaf and Pekoe tips shall be separated by passing them, together with the dust, through a No. 26 sieve of No. 30 brass wire, after the tea has been sifted through a No. 16 sieve."

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

MARCH 2, 1938.

[F. R. Doc. 38-643; Filed, March 2, 1938; 12:10 p. m.]

DEPARTMENT OF COMMERCE.

Bureau of Marine Inspection and Navigation.

AMENDMENT TO HAWSER REGULATIONS

Pursuant to call under Section 14 of the Act of May 28, 1908, 35 Stat. 424, 428, by the Honorable Daniel C. Roper, Secretary of Commerce, a meeting of the so-called Hawser Board, consisting of R. S. Field, Director of the Bureau of Marine Inspection and Navigation, and Charles A. Park, Deputy Commissioner of Lighthouses, met in the office of the Director of the Bureau of Marine Inspection and Navigation, Washington, D. C., February 16, 1938, at which time the following resolution was unanimously adopted:

Resolved, That pursuant to the provisions of Section 14 of the Act of May 28, 1908, 35 Stat. 424, 428, Sections 2 and 3, respectively, appearing on page 38 of the Pilot Rules for Certain Inland Waters of the Atlantic and Pacific Coasts and of the Coast of the Gulf of Mexico, be and the same hereby are amended in the following respects:

Delete all of said Sections 2 and 3 as now promulgated and state instead the following:

SEC. 2. With the exceptions noted below, hawsers are limited in length to 75 fathoms, measured from the stern of one vessel to the bow of the following vessel; and should in all cases be as much shorter as the weather or sea will permit.

SEC. 3. In all cases where, in the opinion of the master of the towing vessel, it is dangerous or inadvisable, whether

¹ 2 F. R. 425 (DI).

on account of the state of the weather, or sea, or otherwise, to shorten hawsers, hawsers need not be shortened to the prescribed length, except that hawsers must in any event be shortened to the prescribed length upon reaching the applicable locality named below:

(a) Tows from sea or Chesapeake Bay bound for Hampton Roads or beyond, before passing Thimble Light.

(b) Tows bound up the Chesapeake, to the northward of Baltimore Light.

(c) Tows bound up into New York from sea, at West Bank.

(d) Tows bound up the Delaware, between Fourteen Foot Bank and Cross Ledge Lighthouses.

(e) Tows from sea to Narragansett Bay, before reaching Rose Island.

(f) Hawsers may also be lengthened in the same places, under the same circumstances, when tows are bound out.

[SEAL] R. S. FIELD,
Director, Bureau of Marine Inspection and Navigation.

CHAS. A. PARK,
Deputy Commissioner, Bureau of Lighthouses.

Approved February 28, 1938.

DANIEL C. ROPER,
Secretary of Commerce.

[F. R. Doc. 38-648; Filed, March 2, 1938; 12:49 p. m.]

FARM CREDIT ADMINISTRATION.

[FCA 77]

EMERGENCY CROP AND FEED LOANS IN CONTINENTAL UNITED STATES MADE PURSUANT TO ACT OF CONGRESS APPROVED JANUARY 29, 1937, AND JOINT RESOLUTION OF CONGRESS APPROVED FEBRUARY 4, 1938

AMENDATORY REGULATION NO. 2

Paragraph 8 of the regulations dated February 4, 1938,¹ is hereby amended to read as follows:

8. No loan for the production of crops will be made in an amount greater than the immediate and actual cash needs in the particular case to plant the crop in a manner approved by the Extension Service of the Department of Agriculture.

The immediate and actual cash needs in a particular case must not exceed the actual costs per acre in such case as determined by individual consideration of the various factors involved, e. g., whether it is necessary to purchase seed, feed, fertilizer, spraying material and/or fuel for tractors; the cost thereof; and any other incidental expenses currently incurred in that community in connection with the particular crop to be produced. In no event may loans for crop production purposes exceed the following maximum allowances per acre:

Maximum Allowances Per Acre

	1 Without commercial fertilizer	2 Where commercial fertilizer is used	3 Where commercial fertilizer & spray material, including dust, are used ¹
Grain crops.....	\$2.50	\$4.00	
Cotton.....	4.00	6.00	
Tobacco.....	4.00	12.00	\$13.00
Peanuts.....	3.00	4.50	
Irish potatoes (commercial).....	10.00	25.00	27.50
Truck (commercial).....	10.00	22.00	25.00
Miscellaneous crops.....	2.00	3.50	
Sugar cane.....	12.00	12.00	
Sugar beets.....	8.00	12.00	
Rice.....			
When landlord furnishes water.....	8.00	8.00	
If landlord does not furnish water.....	13.00	13.00	
Citrus fruit trees (bearing).....	20.00	20.00	20.00
Other fruit trees (bearing).....	10.00	14.00	20.00

¹ Where spray material, including dust, is used without commercial fertilizer, the allowance for such spray material and dust will be the difference, if any, between the allowances in column 2 and column 3.

² Of the grain allowances shown in the table not more than \$1 shall be used for summer following.

³ F. R. 345 (DI).

These figures include allowances for fuel, oil, and feed for workstock for crop production purposes and incidental expenses, for which no additional allowances will be made.

An additional allowance not to exceed \$3 per acre will be made for water charges (including maintenance, electric power, and fuel) for crops other than rice grown on irrigated land.

Allowances for commercial fertilizer will be made only in areas where commercial fertilizer is customarily used.

The following exception is made to the foregoing table of maximum allowances per acre:

1. The maximum allowance per acre for the purpose of producing and harvesting Irish potatoes (where commercial fertilizer and spray material, including dust, are used) in that section known as the "Eastern Shore", which comprises the State of Delaware and the eastern shore of the States of Maryland and Virginia, shall be \$35 per acre.

[SEAL] F. F. HILL,
Acting Governor, Farm Credit Administration.

[F. R. Doc. 38-644; Filed, March 2, 1938; 12:18 p. m.]

[FCA 78]

EMERGENCY CROP AND FEED LOANS IN CONTINENTAL UNITED STATES

AMENDATORY REGULATION NO. 3

The table of maximum allowances per acre prescribed in paragraph 8, of the regulations dated February 4, 1938,¹ as amended, relative to emergency crop and feed loans in the continental United States made pursuant to the Act of Congress approved January 29, 1937, and the Joint Resolution of Congress approved February 4, 1938, is hereby amended by adding after the exception to such table a further exception, as follows:

2. The maximum allowance per acre to be loaned to tobacco growers in the States of Connecticut and Massachusetts shall not exceed the following:

Without commercial fertilizer.....	\$4.00
Where commercial fertilizer is used.....	30.00
Where spray material, including dust, is also used, add.....	3.00

[SEAL] F. F. HILL,
Acting Governor, Farm Credit Administration.

[F. R. Doc. 38-645; Filed, March 2, 1938; 12:19 p. m.]

[FCA 79]

EMERGENCY CROP AND FEED LOANS IN CONTINENTAL UNITED STATES

AMENDATORY REGULATION NO. 4

The table of maximum allowances per acre prescribed in paragraph 8 of the regulations dated February 4, 1938,¹ as amended, relative to emergency crop and feed loans in the continental United States made pursuant to the Act of Congress approved January 29, 1937, and the Joint Resolution of Congress approved February 4, 1938, is hereby amended by adding after the two exceptions to such table a further exception, as follows:

3. The maximum allowance per acre in the States of Washington, Oregon, and Idaho for fertilizing, spraying, and dusting fruit trees of bearing age, other than citrus, shall not exceed \$40 per acre.

[SEAL] F. F. HILL,
Acting Governor, Farm Credit Administration.

[F. R. Doc. 38-646; Filed, March 2, 1938; 12:20 p. m.]

³ F. R. 345 (DI).

[FCA 89]

EMERGENCY CROP AND FEED LOANS IN CONTINENTAL UNITED STATES

AMENDATORY REGULATION NO. 5

The table of maximum allowances per acre prescribed in paragraph 8 of the regulations dated February 4, 1938,¹ as amended, relative to emergency crop and feed loans in the continental United States made pursuant to the Act of Congress approved January 29, 1937, and the Joint Resolution of Congress approved February 4, 1938, is hereby amended by adding after the three exceptions to such table a further exception, as follows:

4. The maximum allowance per acre for the purpose of producing Irish potatoes (where commercial fertilizer and spray material, including dust, are used) in the States of Maine, Connecticut, and Massachusetts shall not exceed \$30.00 per acre.

[SEAL]

F. F. HILL,

Acting Governor, Farm Credit Administration.

[F. R. Doc. 38-647; Filed, March 2, 1938; 12:20 p. m.]

FEDERAL HOME LOAN BANK BOARD.

Federal Savings and Loan Insurance Corporation.

AMENDMENT TO RULES AND REGULATIONS FOR INSURANCE OF ACCOUNTS

LIMITING THE BORROWING POWER OF INSURED INSTITUTIONS

Be it resolved, That pursuant to authority vested in the Board of Trustees of the Federal Savings and Loan Insurance Corporation by Sections 402 (a) and 403 (b) of the National Housing Act (12 U. S. C. 1725 (a), 1726 (b)), the last two sentences of Section 9-A of the Rules and Regulations for Insurance of Accounts are hereby amended to read as follows:

"No insured institution shall borrow an aggregate amount exceeding one-half the amount paid in and credited on shares, share accounts, stock, certificates of deposit and investment certificates; nor, within such borrowing limit, an amount aggregating more than one-fifth thereof from sources other than a Federal home loan bank or a State-chartered central reserve institution. No action of an insured institution in obtaining funds through borrowing, in accordance with the provisions of this section, shall be deemed a violation hereof, because of a subsequent reduction in the amounts paid in and credited on shares, share accounts, stock, certificates of deposit and investment certificates."

Be it further resolved, That, it being deemed that this is a major amendment affecting matters of general principle or policy, and not of an emergency character, pursuant to the provisions of subsection (a) of Section 22 of the Rules and Regulations for Insurance of Accounts, such amendment shall be effective 30 days from a date to be fixed by the Secretary to the Board, which date shall be fixed within 10 days from the date of the adoption of this resolution. (This regulation will become effective April 1, 1938)

Adopted by the Board of Trustees of the Federal Savings and Loan Insurance Corporation on March 1, 1938.

[SEAL]

R. L. NAGLE, Secretary.

[F. R. Doc. 38-636; Filed, March 2, 1938; 9:23 a. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 28th day of February, A. D. 1938.

¹ 3 F. R. 345 (DI).

Commissioners: Garland S. Ferguson, Jr., Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[Docket No. 3247]

IN THE MATTER OF WILLIAM L. GOETZE, INDIVIDUALLY AND TRADING AS BUHMAN & GOETZE

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That William C. Reeves, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Thursday, March 17, 1938, at ten o'clock in the forenoon of that day (eastern standard time) in Room 424, 815 Connecticut Avenue, Washington, D. C.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission.

[SEAL]

OTIS B. JOHNSON, Secretary.

[F. R. Doc. 38-637; Filed, March 2, 1938; 10:20 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 28th day of February, A. D. 1938.

Commissioners: Garland S. Ferguson, Jr., Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[Docket No. 3249]

IN THE MATTER OF PAUL BOTWIN AND EAULA LOUISE BOTWIN, INDIVIDUALLY AND AS COPARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF EAULA CANDY COMPANY

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That William C. Reeves, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Thursday, March 17, 1938, at eleven o'clock in the forenoon of that day (eastern standard time) in Room 424, 815 Connecticut Avenue, Washington, D. C.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission:

[SEAL]

OTIS B. JOHNSON, Secretary.

[F. R. Doc. 38-638; Filed, March 2, 1938; 10:20 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

*United States of America—Before the Securities
and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 1st day of March, A. D. 1938.

IN THE MATTER OF AN OFFERING SHEET OF PRODUCING LAND-OWNERS' ROYALTY INTERESTS IN THE PHILLIPS-NORRIS TRACT, FILED ON FEBRUARY 10, 1938, BY S. LEROY ESTES, RESPONDENT

ORDER FOR HEARING AND ORDER DESIGNATING TRIAL EXAMINER

S. Leroy Estes, having filed on February 10, 1938, with the Securities and Exchange Commission, an offering sheet for the purpose of obtaining an exemption from registration for the securities described therein under Regulation B of the General Rules and Regulations under the Securities Act of 1933, as amended; and

The Securities and Exchange Commission, having reasonable grounds to believe, and, therefore, alleging that said offering sheet is incomplete or inaccurate in a material respect, or contains an untrue statement of a material fact, or omits to state a material fact necessary to make the statements therein contained not misleading, or fails to comply with the requirements of said Regulation B, to wit:

That the information given under Division II, Item 20 (b), concerning the percentage of water in fluid produced, is not correctly stated;

It is ordered, Pursuant to Rule 340 (b) of the General Rules and Regulations under the Securities Act of 1933, as amended, that an opportunity for hearing be given to the said respondent for the purpose of determining the material completeness or accuracy of the said offering sheet in the respects in which it is herein alleged to be deficient and/or misleading, and whether the effectiveness of the filing of the said offering sheet shall be suspended; and

It is further ordered, That Charles S. Lobingier, an officer of the Commission be, and hereby is, designated as Trial Examiner to preside at such hearing, to continue or adjourn the said hearing from time to time, to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, consider any amendments to said offering sheet as may be filed prior to the conclusion of the hearing, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law; and

It is further ordered, That the taking of testimony in this proceeding commence on the 15th day of March, 1938, at 10:00 o'clock in the forenoon, at the office of the Securities and Exchange Commission, 18th Street and Pennsylvania Avenue, Washington, D. C., and continue thereafter at such times and places as said Examiner may designate.

Upon completion of testimony in this matter the Examiner is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 38-639; Filed, March 2, 1938; 11:38 a. m.]

